

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RHONDA DIEKEVERS,

Plaintiff,

v.

CAROLYN COLVIN,
Acting Commissioner of Social Security,

Defendant.

Case No. 14-11546

Honorable Laurie J. Michelson

Magistrate Judge David R. Grand

**OPINION AND ORDER ADOPTING REPORT AND RECOMMENDATION [12]
AND DISMISSING COMPLAINT WITHOUT PREJUDICE**

Before the Court is Magistrate Judge Grand's Report and Recommendation to Dismiss Complaint for Failure to Serve. (Dkt. 12.) Magistrate Judge Grand recommends dismissing the case without prejudice for failure to prosecute. The Court agrees with this recommendation.

This is a social security case. Plaintiff Rhonda Diekevers, through counsel, filed a Complaint seeking judicial review of Defendant Commissioner of the Social Security Administration's denial of her claims for Supplemental Social Security Income and Disability Insurance benefits. (Dkt. 1.) While Plaintiff was granted leave to proceed *in forma pauperis*, she did not request service by the court. Summonses were originally issued on April 16, 2014. (Dkts. 1-2, 1-3, 1-4.) There is no proof of service for these summonses on the docket. (*See* Dkt.) Magistrate Judge Grand issued an Order to Show Cause regarding Plaintiff's failure to serve on August 26, 2014. (Dkt. 7.) Satisfied with Plaintiff's counsel's response, Magistrate Judge Grand vacated the order on September 15, 2014 and extended the time for Plaintiff to effectuate service. (Dkt. 9.) Summonses reissued on September 16, 2014 (Dkt. 10) but no proof of service was ever filed. (*See* Dkt.) Accordingly, Magistrate Judge Grand issued a Final Order to Show Cause on

October 20, 2014. (Dkt. 11.) Plaintiff's response was due by November 3, 2014. (*Id.* at 2.) Plaintiff never filed a response to that order.

On November 20, 2014, Magistrate Judge Grand filed a Report and Recommendation to Dismiss the Complaint for Failure to Serve. (Dkt. 12.) At the conclusion of his report, the Magistrate Judge notified the parties that they were required to file any objections within 14 days of service, as provided in Federal Rule of Civil Procedure 72(b)(2) and Local Rule 72.1(d), and that "[f]ailure to file specific objections constitutes a waiver of any further right of appeal." (R&R at 3–4.) No objections were filed.

Federal Rule of Civil Procedure 41 authorizes involuntary dismissal for plaintiff's failure to prosecute his case. Fed. R. Civ. P. 41(b); *see Schafer v. City of Defiance Police Dep't*, 529 F.3d 731, 736 (6th Cir.2008) ("Rule 41(b) of the Federal Rules of Civil Procedure confers on district courts the authority to dismiss an action for failure of a plaintiff to prosecute the claim or to comply with the Rules or any order of the court."). This Court's local rules likewise provide that when "the parties have taken no action for a reasonable time, the court may, on its own motion after reasonable notice or an application of a party, enter an order dismissing or remanding the case unless good cause is shown." E.D. Mich. L.R. 41.2. Further, Federal Rule of Civil Procedure 4(m) provides that "[i]f a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time." The Court agrees with Magistrate Judge Grand's assessment that dismissal is appropriate in this case.

Having reviewed the Report and Recommendation, and there being no timely objections, the Court **ADOPTS** the Report and Recommendation as the findings and conclusions of this

Court. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985). It follows that the Court hereby
DISMISSES THE COMPLAINT WITHOUT PREJUDICE.

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

Dated: December 23, 2014

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on the attorneys and/or parties of record by electronic means or U.S. Mail on December 23, 2014.

s/Jane Johnson
Case Manager to
Honorable Laurie J. Michelson